662. Likewise, a suit against an officer to restrain him from doing acts required of him by law, or to restrain him from enforcing a valid law of the state, is a suit against the state. *Fitts* v. *McGhee,* 172 U. S. 516. On the other hand, a suit to compel an officer to do what the statute requires him to do, and to restrain him from doing something else, is not a suit against a state. *Rolston* v. *Missouri Fund Com'rs,* 120 U. S. 390. Also a suit to recover property wrongfully detained by an officer of the state is not a suit against the state. *Tindal* v. *Wesley,* 167 U. S. 204. And "when a suit is brought against defendants who claim to act as officers of a state and, under color of an unconstitutional statute, commit acts of wrong and injury to the property of the plaintiff, to recover money or property in their hands unlawfully taken by them in behalf of the state, or, in a proper case, for an injunction to prevent such wrong and injury; or, for a mandamus in a like case to enforce the performance of a plain legal duty, purely ministerial; such suit is not, within the meaning of the amendment, an action against the state." "The circuit courts of the United States will restrain a state officer from executing an unconstitutional statute of the state, when to execute it would be to violate rights and privileges of the complainant that had been guaranteed by the constitution and would do irreparable damage and injury to him." *In re Tyler,* 149 U. S. 164; *Pennoyer* v. *McConnaughy,* 140 U. S. 1; *Board of Liquidation* v. *McComb,* 92 U. S. 531; COOLEY CONST. LAW, 7th ed. 136; HARE'S CONST. LAW, Vol. 2, 1064. Where an officer acts under an unconstitutional law "he stands stripped of his official character; and, confessing a personal violation of the plaintiff's rights, for which he must personally answer, he is without defense." *Poindexter* v. *Greenhow,* 114 U. S. 270. In *Smyth* v. *Ames,* 169 U. S. 466, the court declared "that a suit against individuals for the purpose of preventing them as officers of a state from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the state within the meaning of that amendment." See, 6 MICH. LAW REV., 86. The court, in the principal case, concludes that the attorney general "in proceeding under such enactment, comes into conflict with the superior authority of that constitution, and he is in that case stripped of his official or representative character, and is subjected in his person to the consequence of his individual conduct." The court, also, says that "an injunction to prevent him from doing that which he has no legal right to do is not an interference with the discretion of an officer." While the decision of the case is probably in harmony with the prior holdings of the court, yet the result of the decision is that it not only prevents the enforcement of an invalid law, but permits the Federal Court to restrain a state attorney general from bringing suit in his state court; and instead of compelling the defendant to rely upon the invalidity of the law as a defense, it permits him to prevent the institution of a suit in the state court.

CONSTITUTIONAL LAW—STATE TAXATION—PROPERTY IN TRANSIT.—The plaintiff, in error, sought to enjoin the state oil inspector from inspecting and taxing certain oils shipped by the plaintiff, in error, from Pennsylvania

and Ohio, and destined for points in certain Southern states, while it is held at a distributing point maintained by the shipper in Tennessee, at which point such oil is unloaded from tank cars into various tanks, and from which it is forwarded to its final destination. The Supreme Court of Tennessee dismissed the bill on the ground that it was a suit against the state within the meaning of the Tennessee Constitution. *Held,* (1) the decision of the state court dismissing the bill gives effect to the tax law which it is alleged violates the commerce clause of the United States Constitution, and is, therefore, reviewable by the United States Supreme Court; (2) that such suit is not against a state in violation of the eleventh amendment to the United States Constitution; (3) that such oil is not property engaged in interstate commerce so as to be exempt from state taxation, while it is at the distributing point. (Mr. Justice MOODY, dissents). *General Oil Company* v. *John H. Crain* (1908), 28 Sup. Ct. Rep. 475.

The decision in this case seems to extend the taxing power of a state over the property of a non-resident, in transit, to its fullest extent. It is a business conducted in Tennessee within the meaning of *American Steel & Wire Co.* v. *Speed,* 192 U. S. 500, where the court declares that goods from another state have arrived at their destination, after they are at rest within the state, and are enjoying the protection which the laws of the state afford, and may be taxed without discrimination like all other property within the state. The court, in the principal case, says that a business is carried on within the state of Tennessee, the oil is taken from transportation, brought to rest within the state, and for which the protection of the state is necessary,—a purpose outside of the mere transportation of oil. See *Standard Oil Co.* v. *Combs,* 96 Ind. 179; *Pittsburg Coal Co.* v. *Bates,* 156 U. S. 577; *The Daniel Ball,* 10 Wall. 557; *Coe* v. *Erroll,* 116 U. S. 517; *Cutting* v. *Florida,* 46 Fed. 641. *State* v. *Engle,* 34 N. J. L. 425; *State* v. *Carrigan,* 39 N. J. L. 35; *Standard Oil Co.* v. *Bachelor,* 89 Ind. 1. This is the first time that the Supreme Court of the United States has taken jurisdiction of a case from a state court which had dismissed the case because of lack of jurisdiction. The court here distinctly announces its power to inquire into the question of jurisdiction of a state court, when a Federal question is raised. As to whether it was a suit against a state within the meaning of the eleventh amendment, see preceding note to *Ex parte Young.*

CORPORATIONS—FRANCHISE AND LICENSE DISTINGUISHED.—An amendment to the Colorado Constitution provided that no franchise relating to any street in Denver should be granted without the consent of the electors. The charter of the city provided the same, and in addition that the council might grant a revocable license in any street. The Union Pacific having failed to get a right to lay a spur on one of the streets at an election, proceeded to lay the tracks on the strength of a revocable license procured from the council. Plaintiffs sought to enjoin the construction of the tracks. *Held,* this right granted by council is not a franchise, and does not come under the